

Remarks

This Amendment is in response to the Office Action mailed December 3, 2002. In the Office Action, the Examiner objected to the drawings, rejected claims 9-15 under 35 U.S.C. § 101, rejected claims 16-23 under 35 U.S.C. § 112, rejected claims 1-2 and 5-8 under 35 U.S.C. § 102, and rejected claims 3-4 under 35 U.S.C. § 103. Applicant has amended claims 9, 12-14, and 16-23. Claims 1-23 remain pending in the application. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

Drawings

1. The Examiner notes that the application has been filed with informal drawings which are acceptable for examination purposes only. Applicant will postpone submission of formal drawings until the application is allowed.

Rejection Under 35 U.S.C. § 101

3. The Examiner rejects claims 9-15 under 35 U.S.C. § 101 because the category of devices "A routing resource" and "A router configured to" are not appropriate categories for an independent claim heading.

Applicant has amended claims 9 and 12-14 to place these claims in appropriate categories for an independent claim heading and respectfully requests that the Examiner withdraw the rejection of claims 9-15 under 35 U.S.C. § 101.

Rejection Under 35 U.S.C. § 112

5. The Examiner rejects claims 16-23 under 35 U.S.C. § 112, first paragraph, because a single means, "Computer-readable Instructions to", which covers every conceivable means for achieving the stated purpose is not enabled for the scope of the claim because the specification disclosed at most only those means known to the inventor.

Applicant has amended claims 16-23 to claim computer readable medium containing a sequence of instructions that perform a method a claimed. Applicant respectfully requests that the Examiner withdraw the rejection of claims 16-23 under 35 U.S.C. § 112, first paragraph.

Rejection Under 35 U.S.C. § 102

8. The Examiner rejects claims 1-2 and 5-8 under 35 U.S.C. § 102(e) as being anticipated by Burwell (US 5,818,842).

Regarding claim 1, the Examiner asserts that Burwell teaches: a route server routing device to function as a link between an ATM network and a LAN (Ethernet) network (Col. 3, lines 16-24), where one form of WAN is an ATM network (Col. 1, lines 16-17), and ports for both networks are combined to communicate with fairness to bandwidth allocation amongst ports for the ATM and Ethernet connectivity (Col. 9, lines 35-40 and Figure 18).

Applicant respectfully submits that the asserted teaching of Burwell does not teach each and every limitation of the claimed invention of claim 1.

Specifically, Burwell does not teach "controlling utilization of a router resource ... according to ... a switching capacity of the router resource".

Regarding claim 2, the Examiner asserts that it is an inherent feature of bandwidth allocation in ATM networks to allow an individual device to exceed what would be its fair share of bandwidth use when the availability of bandwidth is not being optimized by all sharing devices simultaneously.

The Examiner must provide rationale or evidence tending to show inherency. MPEP § 2112. Applicant respectfully submits that the Examiner has merely asserted inherency without providing any rationale or evidence tending to show inherency. "The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic." *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art).

Applicant respectfully submits that bandwidth allocation in ATM networks is a traffic management scheme where the choice of what traffic is permitted is almost completely arbitrary and almost nothing is inherent. Applicant vigorously disagrees with any assertion that permitting a port to exceed a per port bandwidth allocation based on switching capacity is an inherent property of router resources.

Regarding claim 5-8, the Examiner asserts that Burwell teaches: a fairness scheme used to enable bandwidth sharing amongst the transmitting devices (Col. 9, lines 15-25), and a routing device to direct traffic (Col. 19, lines 1-10) in regards to an exit point to allow bandwidth correspondence it

is an inherent function of a routing device to have an exit point in order to enable bandwidth to be used for routing data traffic into and out of a router.

Regarding claim 5, applicant respectfully submits that the asserted teaching of Burwell does not teach each and every limitation of the claimed invention of claim 5. Specifically, Burwell does not teach "determining ... whether or not to admit inbound traffic according to ... a current utilization of total switching capacity of the router resource".

Regarding claims 6-8, the Examiner does not point to specific teaching of Burwell that would teach each and every claim limitation.

Applicant respectfully requests that the Examiner withdraw the rejection of claims 1-2 and 5-8 under 35 U.S.C. § 102(e) as being anticipated by Burwell.

Rejection Under 35 U.S.C. § 103

10. The Examiner rejects claims 3-4 under 35 U.S.C. § 103(a) as being unpatentable over Burwell (US 5,818,842) in view of Spinney (US 6,426,943).

Regarding claims 3 and 4, the Examiner asserts that Burwell teaches: a network system of bandwidth allocation with the need to drop packets based on a filtering requirement (Col. 8, lines 20-24). The Examiner admits that Burwell fails to teach of devices on a network occupying bandwidth in a manner exceeding their tentative thresholds and then being restrained from doing so when new bandwidth requiring devices appear requiring bandwidth. The Examiner asserts that Spinney teaches: a network system operating at by the Ethernet standard (Col. 10, lines 60-64), a Stand-By Scheduler device that appropriates dynamic bandwidth allocation to active

devices and notes that only some of a group of devices will be active at one time and the stand-by bandwidth can be used appropriately as the devices come ready to send data. The Examiner does not cite to a specific portion of Spinney regarding the disclosure of the Stand-By Scheduler (SBS) device. Applicant assumes that the Examiner intended to cite Col. 21, line 66, to Col. 22, line 6.

"To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations." MPEP § 2143.

The Examiner asserts that it would have been obvious to have combined the references "to allow for efficient distribution of bandwidth for a diversified network." Burwell teaches provisioning of full ATM services to Ethernet-attached terminal devices including guaranteed bandwidth and traffic management. Col. 15, lines 25-51. Nothing in the knowledge generally available to one of ordinary skill in the art at the time the invention was made would suggest the desirability of adding the SBS of Spinney to the teachings of Burwell. The Examiner appears to use impermissible hindsight in finding motivation to combine the references.

The SBS of Spinney uses the Schedule Table that is used to control the overall scheduling mechanism disclosed by Spinney, a Calendar Queue algorithm, and an on-chip Stand By Scheduler Calendar Table. Cols. 21-22,

lines 66-38. There would be no reasonable expectation that the SBS of Spinney, which is carefully integrated with Spinney's overall scheduling mechanism, could be successfully added to the interconnector of Burwell that provides none of the environment to support Spinney's SBS mechanism.

Applicant respectfully submits that Burwell and Spinney when combined fail to teach or suggest all the claim limitations. Neither Burwell nor Spinney teach or suggest "if a current switching load due to traffic from all of the LAN ports is equal to a maximum switching capacity of the router resource then those of the LAN ports that are attempting to utilize more than their fair share of the bandwidth availability or the switching capacity are throttled back". The filtering mechanism taught by Burwell drops packets when the devices are not allowed to communicate which is not throttling back ports "that are attempting to utilize more than their fair share of the bandwidth availability or the switching capacity." The SBS taught by Spinney schedules leftover bandwidth which is not throttling back ports. Even if combined, Burwell and Spinney would lack a teaching or suggestion of throttling back a port that is attempting to use excess bandwidth when the switching load from all ports reaches the maximum capacity.

Applicant respectfully requests that the Examiner withdraw the rejection of claims 3-4 under 35 U.S.C. § 103(a) as being unpatentable over Burwell in view of Spinney.

IDS Filed Electronically

Applicant wishes to bring to the Examiner's attention that an IDS has been filed electronically concurrently with the filing of this Response.

Conclusion

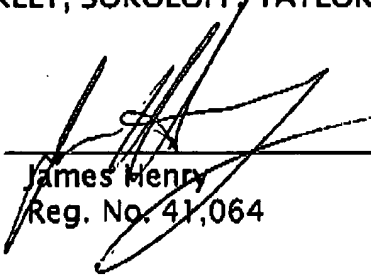
In view of the amendments and remarks made above, it is respectfully submitted that the pending claims are in condition for allowance, and such action is respectfully solicited.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: April 3, 2003

By: _____


James Henry
Reg. No. 41,064

12400 Wilshire Boulevard, Seventh Floor
Los Angeles, California 90025
(714) 557-3800